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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

ECUADOR

[27 June 1990]

GE.90-12425/7918A

I. GENERAL INFORMATION

1. The overall legal framework is established by the Ecuadorian Constitution, the highest law in the Republic. Title II, Section I, articles 19 to 21, defines the rights and safeguards enjoyed by individuals. Those general provisions are in turn administered by means of laws, decrees, decisions and other bodies of regulations.

2. It is appropriate to mention that Ecuador, in keeping with its traditional international policy, has signed the vast majority of conventions, covenants, declarations and other international instruments on human rights. This clearly demonstrates the regard for the individual which is given pride of place in Ecuadorian society, and the atmosphere of peace which prevails in Ecuador.

3. Procedures and mechanisms exist to enable anyone who considers that his rights have been infringed by any authority to apply to the competent bodies either through the administration or through the courts, for redress.

4. The Constitution itself establishes the Tribunal of Constitutional Guarantees as an independent body with jurisdiction throughout the country, competent in all legal and administrative matters, including the hearing of complaints by individuals or bodies corporate of breaches of the Constitution or the law which violate the rights and freedoms guaranteed by the Constitution. If it finds those complaints to be justified, the Tribunal may bring the matter to the attention of the authority or agency responsible.

5. In practical terms, the Government is endeavouring to eliminate torture and other inhuman or degrading treatment completely. In order to do this, it has launched a nation-wide human rights information compaign for law enforcement officials.

6. The Government is also making a major effort to promote peace and harmony within the community by promoting the overall development of Ecuadorian society, by strengthening democratic stability, by rejecting violent methods at all levels of government activity and by using national dialogue to arrive at solutions to the problems besetting the different strata of the population.

7. With the same aim in view, the National Congress has appointed a Special Commission of Inquiry from among its members to investigate complaints of ill-treatment, enforced or involuntary disappearances and any other reports of human rights violations. In this it has the full support of the Government and the various non-governmental human rights bodies in Ecuador, including the Ecuadorian Oecumenical Human Rights Commission, whose work is widely known, and the Latin American Association for Human Rights, based in Quito.

8. Lastly, the Government of Ecuador takes pleasure in repeating that any act or evidence that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is not being respected will be duly investigated with the firm intention of putting a stop to the contravention, in order to preserve the peaceful coexistence enjoyed in Ecuador.

II. INFORMATION CONCERNING ARTICLES IN PART I OF THE CONVENTION

Article 2

9. Article 19 of the Constitution guarantees, inter alia, the following:

Article 19.1 - The inviolability of life and personal integrity. There is no death penalty. Torture and all inhuman or degrading procedures are prohibited.

10. Article 19.5 of the Constitution stipulates:

Equality before the law.

All forms of discrimination for reasons of race, colour, sex, language, religion, filiation, political or other opinions, social origin, economic position or birth are forbidden.

Women, regardless of their marital status, have rights and opportunities equal to those of men at all levels of public life, private and domestic, especially in civil, political, economic, social and cultural matters.

11. The Penal Code and the Code of Criminal Procedure exist to ensure the application of these provisions of the Constitution.

12. Book Two of the Penal Code establishes the definitions of offences against constitutional freedoms, offences against the person and defamatory offences (Titles II, VI and VII, respectively).

13. Furthermore, as stated above, the Government has begun to set up programmes to pursue the goals of respect for and protection of human rights in all areas; to that end, training agreements have been signed with various groups of State officials, in particular magistrates, doctors, lawyers, police officers and prison warders.

Article 3

14. The Aliens Act and the Regulations on Aliens lay down the conditions and requirements that must be met before a person may be extradited (article 3 and Chap. I, Titles II and III of the Act and Regulations, respectively).

15. Over and above the points common to such provisions, Section VII of the Constitution itself states: "The State guarantees to all individuals, male and female, who are subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights enunciated in declarations, pacts, agreements and other international instruments in force."

READEX FICHE

Article 4

16. The Ecuadorian Penal Code, in Chapters VI and VII, articles 203 to 206, deals with crimes relating to statements by accused persons or their relatives and crimes against prisoners or detainees:

> Article 203. Any judge or official who compels a person to testify against himself or a spouse, his ascendants, descendants or relatives within the fourth degree of consanguinity or the second degree of affinity, in matters that may involve criminal liability, shall be punished with six months' to three years' imprisonment.
>
> Article 204: Any judge or official who extracts statements or confessions against the persons indicated in the foregoing article, through whipping, imprisonment or threat of torture, shall be punished with two to five years' imprisonment and deprived of his citizen's rights for a period equal to the duration of the sentence.
>
> Article 205: Anyone who gives or carries out the order to torture a prisoner or detainee, with solitary confinement for a period longer than specified by the law, or with shackles, stocks, bars, handcuffs, ropes, unhealthy prison cells or any other form of torture shall be punished with one to five years' imprisonment and deprived of his political rights for the same period.
>
> Article 206: Neither insecure cells, nor the fearsome character or rebellious conduct of the detainee or prisoner may be used as an excuse in the cases mentioned in the foregoing article.

Article 5

17. The extradition procedures establish that where Ecuadorian judges are competent to try an alleged crime no extradition will be permitted; extradition may take place after the trial has been completed or the sentence served.

18. Furthermore, the Penal Code, Title I, article 5, stipulates:

> Any crime committed within the territory of the Republic, by Ecuadorians or foreigners, shall be tried and punished in accordance with Ecuadorian law, unless otherwise provided by law.
>
> The following shall be considered as crimes committed on the territory of the Republic:
>
> Crimes committed on board Ecuadorian warships or merchant ships or aircraft, ...
>
> 6 (a) Any other offence in respect of which special provisions of the law or international treaties establish that Ecuadorian law shall prevail.

19. Article 3 of the Code of Criminal Procedure makes Ecuadorians and foreigners who commit offences in the territory of the Republic, including offences committed on board Ecuadorian vessels on the high seas, in free airspace, in territorial waters or the airspace thereabove, and offences committed on board foreign vessels or aircraft in Ecuadorian territorial waters or airspace, subject to the jurisdiction of the criminal courts of Ecuador.

Articles 6 and 7

20. The Code of Criminal Procedure, Title I, Chapter I, articles 1 to 13, lays down rules governing the jurisdiction of the criminal courts of Ecuador. They establish respect for the principles and provisions contained in the international agreements ratified by Ecuador, as may be seen in article 3 (i), which also deals with exceptions authorized under international agreements.

Article 8

21. Extradition will take place in the circumstances and manner prescribed by the Constitution, the Aliens Act and the Regulations on Aliens, and the Code of Criminal Procedure.

22. Article 3 of the Aliens Act states:

> The Government of Ecuador may permit the extradition of foreigners awaiting trial or sentencing for ordinary offences committed in another State, upon application accompanied by supporting arguments from [that other] Government invoking the relevant treaty between the two countries or the principle of international reciprocity as required by Ecuadorian domestic legislation.

23. Article 4 of the same Act states that the extradition of the defendant in a trial, whether Ecuadorian or of another nationality, who is resident in a foreign country, may be requested provided that an opinion has been given by the President of the Supreme Court of Justice; this obviously makes the proceedings still fairer and provides special safeguards.

Article 9

24. Ecuador holds that nations should live together in peace and co-operation, and has always regarded international law as setting the standards of conduct for relations between States, as stated in the Constitution. It therefore respects all the covenants, conventions and other international instruments to which it is a party.

Articles 10, 11 and 12

25. As stated before, the Government has launched a national human rights education programme including talks, seminars and lectures for all officials and individuals responsible for preliminary investigations, prosecution or the enforcement of criminal law; topics covered include the treatment due to accused persons and persons in custody, detention or prison.

26. In order to protect the human rights of the individual in reported cases of torture, a thorough investigation is made. As a result of this government requirement a first step may be said to have been taken in this direction with the reorganization of the Criminal Investigation Department, granting the necessary safeguards to persons under investigation, in detention or in prison.

Article 13

27. Section I, article 19.10, of the Constitution establishes the right to address complaints or petitions to the authorities and to be attended to by or receive a reply from them within a reasonable time.

28. The laws governing trials, administrative proceedings and other relevant procedures stipulate periods of time within which matters must be cleared up or settled by administration officials.

Article 14

29. Ecuadorian legislation provides for the right to compensation in case of a wrong and requires the State to award it through its ordinary institutions.

30. In that connection, article 20 of the Constitution provides as follows:

> "The State and other entities of the public sector are obligated to indemnify individuals for any damage caused to them as a consequence of their public services or of the acts of their officials and employees in the performance of their duties".

31. Depending on the nature of the act being challenged, the petitioner may apply to the Contentious Administrative Tribunal and the Tribunal of Constitutional Guarantees, among other bodies, and to a competent judge in criminal matters, and may bring a suit for damages.

Article 15

32. Article 128 of the Code of Criminal Procedure forbids the use of violence, drugs and techniques or methods of any kind which prevent an individual from giving evidence freely and voluntarily, either during trial or during the investigation before or during the trial. It also provides that any officials, employees or police officers who breach this rule shall be liable to criminal punishment.

33. The Penal Code, chapter VI, article 204, stipulates that any judge or authority who obtains statements or confessions through torture shall be liable to criminal punishment, including the loss of political rights.

Article 16

34. The Penal Code, Chapter IX, article 213, renders anyone, whether an employee or public official, representative of authority or law enforcement officer, who orders or carries out any other arbitrary act which violates the freedoms and rights guaranteed by the Political Constitution of the State liable to imprisonment.

Annexes */

1. Political Constitution of Ecuador

2. Penal Code

3. Code of Criminal Procedure

4. Aliens Act, Migration Law, Law of Nationalization and Regulations.

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*/ These documents received from the Government of Ecuador may be consulted in the original Spanish in the archives of the United Nations Centre for Human Rights.

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Addendum

GREECE

[8 August 1990]

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ANNEXES

(1) Articles of the 1975 Greek Constitution.

(2) Articles of the Greek Penal Code.

(3) Articles of the Greek Code of Penal Procedure.

(4) Decision by the Minister of Justice relating to the organization and functioning of the custodial personnel training section of the correctional officers' school (English translation).

(5) Document from the Ministry of Public Order relating to the teaching of courses on human rights in Greek police colleges (English translation).

(6) Extracts from decision No. 619/75 of the Athens Permanent Military Court and No. 169/76 of the Review Court, containing convictions for torture.

Part I: Information of a general nature

Introduction: The Greek political system

1. Greece is a parliamentary republic which has a presidential régime and a written Constitution. In accordance with article 1, paragraph 2 of the 1975 Constitution, popular sovereignty is the foundation of the political system, while article 2, paragraph 1 stipulates that "Respect for and the protection of the value of the human being are the primary obligation of the State". These provisions are contained in part I of the Constitution, which defines the nature of the political system, and they are not subject to any amendment. In other words, the democratic and liberal system is permanent and irreversible.

2. Following the definition of the political system, part II of the Constitution (arts. 4 to 25) sets out and guarantees basic public and social rights. Under Greek legal doctrine, these rights are regarded as specific expressions of the "value of the human being", whose protection is, as already stressed, "the primary obligation of the State".

3. More specifically, article 5, paragraph 2, of the Constitution provides that "The life, honour and freedom of all persons in Greek territory, without any distinction as to nationality, race, language or religious or political beliefs, shall be given full protection". The same article also prohibits the "extradition of any foreigner who is being prosecuted for his activities on behalf of freedom".

4. Article 6 of the Constitution contains detailed provisions to guarantee individual freedom. It authorizes arrest and imprisonment pursuant only to a substantiated warrant, which must be served on the person concerned at the time of his arrest or committal to pre-trial detention. In cases of flagrante delicto, arrest is allowed provided that the person arrested is brought within 24 hours before the examining magistrate, who is required either to release him or to issue a detention warrant against him within three days of his appearance. Paragraph 3 of the article stipulates that, if no decision has been taken when either of these two time-limits has expired, any prison warden or other official, whether civilian or military, in whose custody the arrested person is being held is required to release him immediately. Any breach of these obligations is punishable as unlawful detention and entitles the victim to redress for any harm caused and to financial compensation for moral injury.

5. Article 6 also provides that the maximum period of pre-trial detention is six months in the case of offences and 12 months in the case of crimes. In exceptional cases, these periods may be extended, by a decision of the competent indictment division, for three and six months, respectively.

6. According to article 7, paragraph 2, of the Constitution, "Torture, any form of physical ill-treatment, damage to health, psychological pressure or any other affront to human dignity shall be prohibited in accordance with the law".

7. Article 22, paragraph 3, of the Constitution provides that "Any form of forced labour shall be prohibited".

8. The consolidation of human rights in the Constitution and the total prohibition of torture, which goes beyond the scope of article 1 of the Convention, is the result of the Hellenic Republic's strong reaction to the human rights violations and the abuse of power that occurred during the colonels' dictatorship (April 1967-July 1974).

9. In this connection, it should be emphasized that, as a result of the human rights violations that occurred in Greece during the seven-year dictatorship, Greek public opinion is particularly sensitive to the issue of such violations.

10. After the fall of the dictatorship and the restoration of democracy in Greece (July 1974), trials were held of persons who committed acts of torture during the Junta and extremely heavy sentences were handed down on the basis of the legislation then in force. The convicted persons were dismissed from the police and armed forces. As a result of the Hellenic Republic's firm determination to prohibit torture in future, as illustrated by the above convictions, such acts and complaints relating to them have become quite rare in Greece.

A. Provisions of criminal law relating to the prohibition of torture and the punishment of persons guilty of torture

11. As stated above, article 7, paragraph 2, of the Constitution not only punishes acts of torture and other affronts to human dignity similar to acts of torture (stricto sensu), but also provides for the punishment of persons guilty of such acts.

12. In giving expression to these constitutional precepts, Greek legislation has amended the Penal Code (through Act No. 1500/84 relating to the criminal punishment of persons guilty of torture) and provided for extremely harsh penalties for any official, whether civilian or military, who is responsible for the prosecution and investigation of punishable acts or disciplinary offences, the enforcement of sentences and the surveillance of prisoners and who commits acts of torture in the exercise of his functions.

13. In principle, the prescribed penalty is 5 to 20 years' imprisonment, 10 to 20 years in the most serious cases and life imprisonment if the victim dies. A prison sentence of 3 to 5 years applies in less serious cases.

14. The law provides that neither an order from a superior nor a state of necessity extinguishes the unlawful nature of the act (an essential requirement for its characterization as a crime) and that, if acts of torture are committed when the power of the people has been usurped, they are subject to prescription as soon as lawful authority is restored.

15. Persons convicted of torture are automatically deprived of their political rights and dismissed from their jobs.

16. The above-mentioned penalties have been incorporated in chapter A of the Penal Code relating to "crimes against the State" in order to make it quite clear that, under the Greek legal system, torture is not only a violation of individual rights, but above all a threat to the very existence of the State, which is itself seriously imperilled by any abuse of authority constituting an

affront to human dignity. Moreover, article 2 of the Constitution expressly states that respect for the value of the human being is the foundation of the political system.

17. It should be pointed out that, if torture is practised by a private individual on order from a public official, under Greek law, the official is regarded as the "indirect perpetrator" and the private individual as the "actual perpetrator".

B. International Conventions signed and ratified by the Hellenic Republic

18. The principles embodied in the Universal Declaration of Human Rights, adopted on 10 December 1948 by the United Nations General Assembly, and the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations in 1955, have been adopted by the Hellenic Republic as the cultural, political, ideological and scientific foundation of its legislation. The Hellenic Republic has also ratified the four 1949 Geneva Conventions (Act No. 3481/1955) and Additional Protocol I (Act No. 1786/1988), which cover humanitarian law and contain important provisions relating to the protection of a broad range of persons during armed conflict. The following have also been ratified: the 1951 Convention Relating to the Status of Refugees (Decree-Law No. 3989/1959); the 1968 Protocol relating to the Status of Refugees (Special Law No. 389/1968); and the 1961 European Convention on Extradition (Act No. 4165/1961). It should also be noted that the procedure for the ratification of the International Covenant on Civil and Political Rights is nearing completion. In this connection, it should be mentioned that Greece has ratified the European Convention on Human Rights, whose article 3 (see below) contains provisions which are similar to those of article 7 of the International Covenant.

19. The Hellenic Republic has also ratified the 1950 European Convention on Human Rights (Decree-Law No. 53/1974), whose article 3 prohibits torture and inhuman or degrading treatment or punishment.

20. Since its ratification, this Convention has been part of internal law and is automatically applied by national courts and all Government authorities and, pursuant to article 28 of the Constitution, takes precedence over any conflicting legal provision; it may thus not be repealed, changed, amended or restricted by a national law.

21. In its declaration dated 20 November 1985, the Hellenic Republic accepted the right to individual petition provided for in article 25 of the European Convention on Human Rights. This declaration was renewed on 20 November 1988.

22. Accordingly, in the event of a violation of article 3 of the Convention (or any other civil or political right recognized by the Convention), the victim is entitled to submit a petition to the European Commission of Human Rights, pursuant to the procedures and conditions laid down in articles 25 et seq. of the Convention.

23. The Hellenic Republic has also ratified the International Convention against the Taking of Hostages (Act No. 1688/87).

24. It should be added that the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (signed in Strasbourg in 1987) is nearing completion. Article 2 of this Convention provides for the establishment of a Committee to visit places where persons are deprived of their liberty by a court order or by any other lawful decision taken by an administrative authority.

25. Domestic legislation contains provisions whose scope is broader than that of the Convention and which are embodied in articles 137A et seq. of the Penal Code. They include, in particular, the provisions described below.

26. Article 137A, paragraph 2 of the Penal Code contains a definition of acts which constitute acts of torture stricto sensu and which include, inter alia, any unlawful use of narcotic drugs or other natural or artificial means intended to weaken the victim's will.

27. Paragraph 3 of the same article refers to other types of behaviour which are comparable to acts of torture (classified as punishable affronts to human dignity) and constitute torture in the broad sense of the word. They include, for example: (a) the use of a lie-detector; (b) prolonged isolation; and (c) serious affronts to sexual dignity.

28. Article 137B of the Penal Code covers forms of the above-mentioned crimes that are punishable by harder sentences depending on: (a) the means used to commit the crime; (b) the type of injury caused to the victim; (c) the extent to which the perpetrator represents a danger and (d) whether the person responsible is a superior or the person who ordered the commission of the crime. The perpetrators of such acts may be given sentences up to imprisonment for life if the acts caused the victim's death.

29. Article 137C of the Penal Code provides that persons convicted of acts of torture are automatically deprived of their political rights and, as a complementary penalty, dismissed from their jobs.

30. Article 137D, paragraph 3, relates to the question of prescription for the acts covered by articles 137A and 137B, if they have been committed while "popular sovereignty" has been usurped. In such a case, the period established by law for prescription is restored.

31. Article 137D, paragraph 4, provides that the victim of an act of torture is entitled to seek redress from the person who committed the act and from the State, which are jointly and severally responsible, for any harm caused and to financial compensation for moral injury or psychological suffering.

C. The incorporation of international conventions into internal law

32. As of the date of publication in the Official Journal of Act No. 1782/88 on the ratification of the Convention against Torture, all persons subject to Greek law as well as law-enforcement agencies are under an obligation to comply with its provisions.

33. The Convention cannot be repealed, amended, restricted or changed by any law because, once an international convention has been ratified, it takes precedence over any conflicting legal provision, in accordance with article 28 of the 1975 Greek Constitution.

34. As of 3 June 1988, any provision of Greek law that is contrary to the Convention is thus automatically repealed and no such provision may be adopted in future, as it would automatically be null and void.

35. All persons of Greek or foreign nationality who are subject to the jurisdiction of the Greek authorities and courts, both military and political, are protected by the provisions of the Convention and may apply to the Greek authorities or courts in connection with a breach of those provisions.

D. Jurisdiction

36. Under Greek law, jurisdiction over criminal proceedings relating to any punishable offence - and, consequently, acts of torture - lies with the public prosecutor.

37. Criminal proceedings are instituted automatically and are subject to the principle of the rule of law. In other words, the prosecutor is required by law to institute criminal proceedings as soon as he receives a petition or a complaint or if he receives any information concerning the commission of torture (art. 36 of the Code of Penal Procedure).

38. If, for any reason, the public prosecutor fails to institute criminal proceedings, the procurator-general of the Appeal Court, the procurator-general of the Court of Cassation or the Minister of Justice is empowered to order him to do so. Furthermore, even the indictment division has the authority to order him to institute criminal proceedings (art. 29 of the Code of Penal Procedure).

39. In view of the seriousness of the crime of torture, a proper investigation must be carried out (art. 246 of the Code of Penal Procedure) by an ordinary judge (of first instance).

40. Upon completion of the investigation, a decision is handed down by the correctional division. If the decision is to commit the person under investigation for trial, both he and the prosecutor are entitled to appeal to the indictment division. If the decision is to acquit the person under investigation, both the victim (if he has brought a civil action) and the prosecutor are entitled to appeal. An application for judicial review of the ruling of the indictment division is made to the Court of Cassation.

41. If the person under investigation is committed for trial, he is generally tried by a mixed court consisting of a jury in the first instance and by the mixed appeal court consisting of a jury in the second instance. An application for judicial review may be made against the decision.

42. Under the Constitution, both prosecutors and judges are guaranteed irremovability (they retire at the age of 65 or 67) and professional and personal independence. During the exercise of their functions, they are subject only to the provisions of the Constitution and to constitutional laws.

43. This constitutionally guaranteed independence means that the Government cannot give them instructions or orders relating to the interpretation and enforcement of the laws.

E. Protection afforded by the law to the victims of torture

44. Any person, whether of Greek or foreign nationality, who claims to have been the victim of torture or of inhuman treatment or who claims that he has suffered a serious affront to his dignity during investigation proceedings or while he was in detention or prison may file a complaint or petition with the public prosecutor (or any other official responsible for investigation proceedings) to have criminal proceedings instituted against the perpetrator. However, even if the victim or any other person has used another means, such as the press, to report that a crime involving acts of torture has taken place, there is an automatic obligation for an investigation to be carried out and criminal proceedings to be instituted if the investigation reveals any evidence, however slight, that such a crime has been committed.

45. The victim is also entitled to claim complete redress as well as financial compensation for moral injury from the State and from the perpetrator of the act, who are jointly and severally responsible.

46. If the victim dies as a result of torture, his relatives are entitled to claim redress and compensation for moral injury.

F. Practical implementation of the Convention

47. The Ministry of Justice has been informed of two cases in which communications have been sent to the United Nations Commission on Human Rights by Greek citizens who claim to have been the victims of torture. The first concerns the case of Evangelos Katsikoyannis, who has alleged that he was subjected to physical ill-treatment by the Cretan police. As a result of his complaint, the Public Prosecutor in Iraklion instituted criminal proceedings against the police officers alleged to have committed the crimes for violations of articles 137A, paragraph 3, and 137B, paragraph 1 (a) and (b), article 137A, paragraph 1 (a), of the Penal Code.

The case was referred to the Court of Appeal (composed of three members) by ruling No. 107/89 of the Iraklion correctional division and it will be heard on 5 December 1990.

The other case concerns Yannis Bouranis, who has also alleged that he was tortured by police officers in Salonica. The Public Prosecutor in Salonica instituted criminal proceedings against the police officers alleged to be responsible and the result was that they were acquitted by decision No. 1088/89 handed down by the correctional division.

Part II: Information in relation to each of the articles in Part I of the Convention

Article 2

48. We have already referred in detail to the legislative measures adopted by the Hellenic Republic since 1984, i.e. before Greece ratified the Convention against Torture. Greece was thus prepared to accept the provisions of the Convention, as Greek law already specified (in arts. 137A et seq. of the Penal Code) that the prohibition against torture applied to any investigatory, police or even military authority.

49. Moreover, in 1988, the Ministry of Justice introduced a new "Code of basic rules for the treatment of detainees" (Act No. 1781/88), article 2 of which provides that "the treatment of detainees shall not be humiliating and shall be such as to mitigate the unfavourable consequences of deprivation of freedom, to guarantee respect for human dignity and to encourage self-respect and the development of a sense of responsibility ...".

In addition, article 5, paragraph 2, on the "main rights of detainees" provides that "in the event of an unlawful act against detainees or the violation of their rights by any member of the prison staff, detainees are entitled immediately to petition the higher prison authorities and, subsequently, the court of enforcement of sentences".

Article 93, paragraph 5, states that "prison staff may not use violence against detainees, except in self-defence or in the event of attempted escape or failure to obey a lawful order".

50. Under article 48 of the Constitution, article 7, which prohibits torture, may not be suspended even in the event of war or mobilization against external danger.

Article 3

51. It should be emphasized that most of the persons covered by the provisions of this article are refugees. The following should be noted with regard to the status of such persons in Greece: firstly, as already indicated above, the extradition of persons being prosecuted for their activities on behalf of freedom is prohibited by the Constitution (the provisions of the Constitution are the supreme law in Greece, they take precedence over ordinary laws and both the judiciary and administrative bodies are required to observe them).

The Hellenic Republic has ratified the 1951 Convention relating to the Status of Refugees (Decree-Law No. 17/26 of September 1959), whose article 33 prohibits the expulsion or return ("refoulement") of refugees whose life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. It should also be noted that, in accordance with the unvarying practice of the competent Greek authorities, the principle of non-refoulement applies not only to persons who have been granted refugee status, but also, on the basis of a broad interpretation of article 33 of the Convention, to persons who do not officially have refugee status, but whose life or freedom would be threatened for any of the reasons referred to in article 33 of the 1951 Convention.

52. According to Greek legislation relating to refugees, all applications for asylum are examined individually and the authorities do not apply criteria such as whether the person may have resided, prior to his application, in a country from which he was not in danger of being expelled or returned to his country of origin or to a third country where his life and freedom might be threatened. Provision is also made for appeal to the Ministry of Justice and then to the competent Greek administrative courts against a decision by the authorities to reject the application.

53. With regard to the extradition of foreigners, it should be recalled that the Hellenic Republic has ratified the European Convention on Extradition, which embodies the rule of speciality. This rule also governs Greek legislation, which provides that: (a) the extradition of a person is prohibited if there are grounds for suspecting that he will be prosecuted in the State to which he is being extradited for a different act from that for which the extradition has been requested (art. 438 (e) of the Code of Penal Procedure); (b) extradition is authorized only if the person to be extradited will not be prosecuted or sentenced in the State to which he is being extradited for acts committed prior to his extradition, with the exception of that for which he is being extradited.

Article 4

54. Articles 137A et seq. relate to the obligations of the Hellenic Republic under article 4 of the Convention. An attempt to commit a crime or premeditated offence, as well as participation in such crimes, are thus punishable under the general provisions of the Penal Code.

Pursuant to article 42, paragraph 1, of the Penal Code, an attempt is punished by a lighter penalty and, if the penalty is not enough to deter the guilty person from committing other punishable offences, the court may sentence him to the same penalty as that laid down by law for a completed offence (art. 42, para. 2).

55. According to articles 45 et seq. of the Penal Code, moreover, "if two or more persons have jointly committed a punishable offence, each of them shall be punished as its perpetrator".

Incitement and complicity thus carry heavy penalties, as article 46 of the Penal Code provides that the secondary parties receive the same sentence as the principal, while accessories after the fact receive lighter sentences.

Article 5

56. The territorial limits for the application of criminal law in the Hellenic Republic are defined in articles 5, 6, 7 and 8 of the Penal Code.

57. "Article 5: Offences within the country

1. Greek criminal law is applicable to all acts committed within the country, even if committed by aliens.

2. Greek ships and air vessels, wherever they may be, are considered territory of the State, unless subject to a foreign law in accordance with international law".

58. "Article 6: Offences by Greeks abroad

1. Greek criminal law is applicable to an act, denominated by Greek law as a felony or misdemeanour and committed in a foreign country by a Greek, if the act is punishable under the laws of that country or if the act is committed in a territory without state organization.

2. A criminal prosecution may be maintained against an alien who, at the time of the commission of the offence, was a Greek citizen and against an alien who, after commission of the offence, gained Greek citizenship.

3. Before the provisions of paragraphs 1 and 2 shall apply to misdemeanours, a complaint from the victim or an application from the Government of the country wherein the misdemeanour was committed shall be required.

4. Violations committed in a foreign country shall be punishable only if a statute expressly provides for such punishment".

59. "Article 7: Offences by aliens abroad

1. Greek criminal law is applicable to an alien for an act, denominated by Greek law as a felony or misdemeanor and committed in a foreign country, if the act is directed against a Greek citizen and if the act is punishable under the laws of the country wherein the act was committed or if the act was committed in a territory without state organization.

2. The provisions of paragraphs 3 and 4 of the preceding article shall apply to this situation".

60. Article 8 of the Penal Code specifies which crimes committed abroad are punishable under Greek legislation (such as high treason, illegal drug trafficking, obscene publications, etc.).

Article 6

61. As stated above, matters relating to the arrest and detention of persons are dealt with in the Constitution. Article 445 of the Code of Penal Procedure also contains detailed provisions relating to the arrest and detention of a foreigner whose extradition has been requested.

62. The warrant for the arrest of the person whose extradition is requested is issued by the President of the Court of Appeal. The person may also be arrested on the orders of the procurator-general of the Court of Appeal before the warrant has been issued and even before the request for extradition has been filed if there are grounds for suspecting that he may avoid arrest (art. 445, para. 2).

Subsequent paragraphs of the article establish short deadlines for the initiation and completion of extradition proceedings.

63. Article 6, paragraphs 2 to 4 ,together with the Convention as a whole, have force of law in Greece and no subsequent procedure is required for their implementation.

Article 7

64. In addition to bilateral conventions relating to judicial assistance and extradition, Greece has signed and ratified the following: (a) the European Convention on Mutual Assistance in Criminal Matters, by Presidential Decree No. 4218/1961; and (b) the European Convention on Extradition, by Presidential Decree No. 4165/1961.

65. Apart from any international conventions on extradition that may exist, Greek penal procedure usually authorizes extradition for any act punishable by a maximum prison sentence of over two years (with the exception of certain offences such as press offences, political offences, etc.) (arts. 437 et seq. of the Code of Penal Procedure).

66. The grounds for authorizing or refusing the extradition of a foreigner are specifically defined by law (arts. 437 and 438 of the Code of Penal Procedure). The cases in which the extradition of a foreigner is prohibited include that covered by article 438, paragraph 2, which provides that, under Greek legislation, the prosecution and punishment of a crime committed abroad are the responsibility of the Greek courts.

In such cases, the matter is referred to the competent authorities for criminal proceedings to be instituted.

Article 8

67. Article 436 of the Code of Penal Procedure states that "the conditions and procedure for the extradition of foreigners are governed by the provisions of the subsequent articles, which apply when no treaty exists or even when a treaty does exist, provided that they do not conflict with the treaty or matters not covered by it".

The offences referred to in article 4 are included as extraditable offences, as provided for in article 437 of the Code of Penal Procedure.

Article 9

68. The implementation of this article is guaranteed, as already noted, by (a) the provisions of the European Convention on Mutual Assistance in Criminal Matters; (b) the bilateral treaties on judicial assistance which the Hellenic Republic has signed and ratified; and (c) the provisions of articles 457 et seq. of the Code of Penal Procedure which govern the conditions and procedure for transmission of and compliance with requests for judicial assistance.

Articles 10 and 11

69. The foundation for the prohibition of torture is the Greek Constitution and the provisions relating to penalties and the victim's right to redress are contained in the Penal Code.

70. These provisions are covered by constitutional and general criminal law, both of which are taught as major subjects in the law faculties of Greek universities.

Courses on these subjects are also taught in police training colleges, i.e. to officers responsible for conducting preliminary inquiries. The provisions of the Code of Penal Procedure which govern the procedure for preliminary inquiries and investigations are also taught.

Articles 12 and 13

71. Criminal proceedings in connection with any crime of torture are automatically instituted by the procurator-general, who is required to institute proceedings whenever he receives a report, a complaint or on information relating to torture.

The appropriate investigations are initiated ex officio and the decision is taken by independent judicial bodies (divisions or courts).

72. More specifically, as far as the rights of the accused during the preliminary inquiry and the investigation are concerned, it should be noted that:

The accused (a) is always entitled to be accompanied by his lawyer, during his defence or during adversary proceedings with another accused person or a witness; (b) in no case may an accused person be prevented from communicating with his lawyer; (c) when the accused person is called upon to present his defence, he is entitled to consult all the documents used in the investigation and the preliminary inquiry and to obtain certified copies of the documents; (d) he may request a period of 48 hours before presenting his defence, in order to have time to prepare it. The examining magistrate or the official who has carried out the preliminary inquiry is required to inform the accused of all these rights and to state in his report that he has provided this explanation (arts. 100 to 104 of the Code of Penal Procedure). The accused person is also entitled not to defend himself. These provisions are taught in detail in the law faculties of universities, as well as in police colleges. A breach of these provisions not only entails consequences for whoever commits the breach, but is also a violation of the rights of the defence of the accused person and leads to absolute nullity (art. 171 of the Code of Penal Procedure), which is taken into account automatically and constitutes grounds for an application for judicial review (arts. 484 and 510 of the Code of Penal Procedure).

The prosecutor or deputy prosecutor is entitled to be present during any part of the investigation (e.g. the examination of witnesses or the presentation of the accused's defence), whether during the ordinary investigation or during the preliminary inquiry.

Article 14

73. As already pointed out, both the victim, or if he has died as a result of torture, his relatives, are entitled to full redress and financial compensation both from the perpetrator and from the State (art. 137D, para. 4, of the Penal Code).

Articles 15 and 16

74. Pursuant to article 239 of the Penal Code, any official whose functions include the prosecution and investigation of punishable acts and who has unlawfully used blackmail in order to obtain an oral or written statement from the accused, from a witness or from an expert shall be liable to one year's imprisonment, unless a more serious penalty is imposed by the provisions relating to acts of torture (arts. 137A and 137B).

Under articles 223 and 224 of the Code of Penal Procedure, moreover, a witness must testify freely and without interruption and none of the parties may ask him dissuasive questions.

Lastly, the statements made by the witness during the preliminary inquiry may be presented at the trial only if the witness is prevented from attending by death, old age, serious and chronic illness, etc. Statements by witnesses and any other evidence are taken freely into account by the court in accordance with the basic principle of penal procedure, namely that of "moral proof", embodied in article 177 of the Code of Penal Procedure. Consequently, if the evidence given by a witness or the accused's defence is not spontaneous, but is the result of violence of any kind, whether physical or psychological, the court will not take it into consideration and will, pursuant to the above-mentioned provisions, punish whoever is responsible for using physical or psychological violence.

Annexes */

(1) Articles of the 1975 Greek Constitution.

(2) Articles of the Greek Penal Code.

(3) Articles of the Greek Code of Penal Procedure.

(4) Decision by the Minister of Justice relating to the organization and functioning of the custodial personnel training section of the correctional officers' school (English translation).

(5) Document from the Ministry of Public Order relating to the teaching of courses on human rights in Greek police colleges (English translation).

(6) Extracts from decision No. 619/75 of the Athens Permanent Military Court and No. 169/76 of the Review Court, containing convictions for torture.

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*/ These documents (English/French) are available for consultation, as submitted by the Greek Government, in the files of the Centre for Human Rights.